

REMARKS

Claims 1-30 were submitted for examination and remain in the case.

Claims 1-2, 8, 16, 20, 23, 24, and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,366,696 to Hertz et al. (hereinafter “Hertz”). Claims 3, 4, 9-11, 17, 18, 25, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertz in view of U.S. Patent 6,592,033 to Jennings et al. (hereinafter “Jennings”). Claims 5, 19, 26, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertz as applied to claims 1, 16, 24, and 27. Claims 6 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertz in view of U.S. Patent Publication 2003/0189098 to Tsikos et al. (hereinafter “Tsikos”). Claims 7, 12, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertz in view of U.S. Patent 5,497,314 to Novak (hereinafter “Novak”). Claims 13-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hertz in view of U.S. Patent 6,260,023 to Seevers et al. (hereinafter “Seevers”).

REJECTION OF CLAIMS 1-2, 8, 16, 20, 23, 24, AND 27 UNDER 35 U.S.C. § 102(b)

The Examiner rejected claim 1 under 35 U.S.C. § 102(b) in view of Hertz. This rejection is respectfully traversed.

It is well settled that under 35 U.S.C. § 102 that “an invention is anticipated if... all the claim limitations [are] shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim. The identical invention must be shown in as complete detail as is contained in the patent claim.” *Richardson v. Suzuki Motor Co., Ltd.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Therefore, only if each limitation is literally disclosed by the prior art reference is the claim anticipated.

Amended claim 1 recites, in pertinent part, “the visual characteristic captured independent of the reading of the coded identifier.”

Hertz fails to teach or disclose independent reading of the coded identifier and independent capture of the visual characteristic, but rather teaches a system that captures an image of an object having a bar code. *See* col. 1 line 27. The system as taught by Hertz requires that the bar code be within the focused field of view of the camera. *See* Hertz col. 1 lines 40-42. The bar code reading software 22 locates the bar code within the image and decodes the bar code by using optical character recognition of numeric characters printed with the bar code. *See* Hertz col. 2 lines 55-62. As such, the object must be orientated so that the bar code is viewable by the camera. This restriction severely limits the types of distinguishing visual characteristics that can be captured with Hertz.

In high-volume situations, such as a supermarket check-out line, capturing the bar code within the image necessarily requires additional attention by the cashier thereby slowing down the

check-out process. Furthermore, distinguishing visual characteristics may not be captured at all. For example, an image captured by Hertz of other items, such as produce (which use a bar code separate from the produce on a reference card) will not provide any distinguishing visual characteristics. Bar codes are traditionally located on rear or bottom surfaces of object packaging. Because the rear or bottom surfaces of different packages often appear similar, the image captured by the camera will not include a distinguishing and/or identifying visual characteristic for the item.

Conversely, the claimed invention may utilize standard laser bar code scanners, or other types of coded identifiers and their associated readers presently in use (such as magnetic or radio frequency identification) to read a coded identifier. Alternatively, bar codes on reference cards may be scanned and/or a coded identifier may be keyed in by an operator.

In the claimed invention, there is no dependency between the image captured and reading of a coded identifier as in Hertz. The capture module is typically a separate element and requires no special object orientation and therefore no special intervention by the cashier or customer. Furthermore, the capture module may capture an image of the entire object without the need to focus in and locate the bar code. This allows for a more accurate image of certain visual characteristics like size, color, and shape because no particular orientation or position is required. In addition, the checkout process is faster.

Therefore, Hertz teaches a system that requires the coded identifier and visual characteristic to be in the **same image**. The claimed invention, however, reads the coded identifier separate from the capturing visual characteristics. The separate nature of the reader and capture module allow for more robust and effective readers and capturing systems. The capture of the visual characteristic is faster, more effective, and more accurate.

REJECTION OF CLAIMS 3-7, 10-12, 14-15, 17-19, 21-22, 25-26, 28-29, AND 30 UNDER 35

U.S.C. § 103(a)

The examiner rejected claims 3-7, 10-12, 14-15, 17-19, 21-22, 25-26, 28-29, and 30 under 35 U.S.C. § 103(a) in view of Hertz, Jennings, Novak, Tsikos, and Seevers. These rejections are respectfully traversed.

The examiner bears the initial burden of establishing a *prima facie* case of obviousness. *See* MPEP § 2142. To establish a *prima facie* case of obviousness, the combination of the prior art references must teach or suggest all the claim limitations. *See* MPEP § 2142.

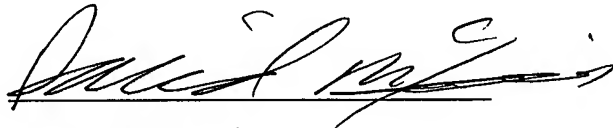
Applicants respectfully assert that the combinations of Hertz with any of Jennings, Novak, Tsikos, or Seevers fails to teach or suggest all the claim limitations of amended independent claims 1, 9, 13, 16, 24, and 27 from which claims 3-7, 10-12, 14-15, 17-19, 21-22, 25-26, 28-29, and 30 depend. Specifically, Hertz fails to teach an independent reading of the coded identifier and independent capture of the visual characteristic. These claimed elements are neither taught nor suggested by Jennings, Novak, Tsikos, or Seevers. Therefore, Applicants respectfully assert that the Examiner has failed to establish a *prima facie* case of obviousness for rejecting claims 3-7, 10-12, 14-15, 17-19, 21-22, 25-26, 28-29, and 30

Applicants have amended independent claims 1, 9, 13, 16, 24, and 27 in order to clarify and to highlight that reading the identifier is separate from capturing an image. As a result of the amendments to the claims and the presented remarks, Applicants assert that independent claims 1, 9, 13, 16, 24, and 27 are in condition for prompt allowance. Applicants do specifically traverse the rejections of dependent claims 2, 8, 20, and 23 under 35 U.S.C. § 102(b) and the rejections of dependent claims 3-7, 10-12, 14-15, 17-19, 21-22, 25, 26, 28, 29, and 30 under 35 U.S.C. 103(a),

which depend from independent claims 1, 9, 13, 16, 24, and 27, and believe those claims to be allowable for at least the same reasons as independent claims 1, 9, 13, 16, 24, and 27.

Should additional information be required regarding the traversal of the rejections of the dependent claims enumerated above, Examiner is respectfully asked to notify Applicants of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. McKenzie", written over a horizontal line.

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